IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5129 OF 2006

Bhavana Mahendra Shah
and another. ... Petitioners.
V/s.
Goregaon Urban Co-op.Bank Ltd. ... Respondent.

WITH
WRIT PETITION NO. 5131 OF 2006

Darshika Mahendra Shah
and another. ... Petitioners.
V/s.
Goregaon Urban Co-op.Bank Ltd. ... Respondent.

WITH
WRIT PETITION NO. 5133 OF 2006

Bhavana Mahendra Shah
and others. ... Petitioners.
V/s.
Goregaon Urban Co-op.Bank Ltd. ... Respondent.

A.S.Desai with V.M.Joshi for the petitioners.

P.M.Gaonkar for the respondent.

CORAM: V.C.DAGA, J.

DATED: 19th September 2006.

P.C.:

. Heard learned counsel for the rival parties.

. Perused petitions.

2. The prayers made in all the three petitions are similar. The contentions raised are identical. Submission advanced by rival parties are similar. Hence all the three petitions are being disposed of by this common order.

3. Having gone through the impugned order and the contentions raised, it is not in dispute that suit summons was returned with postal endorsement "unclaimed". Unclaim is good service in view of the law laid down by the Apex Court in the case of **K.Bhaskaran v. Sankaran Vaidhyan Balan**, 1999 (4) All MR 452; wherein the Court relying upon its earlier judgments in the case of **Harcharan Singh v. Smt.Shivrani**, (1981) 2 SCC 535: AIR 1981 SC 1284 and **Jagdish Singh v. Natthu Singh**, (1992) 1 SCC 647: AIR 1992 SC 1604 ruled that a notice returned with postal endorsement "unclaimed" is to be presumed as served treating it as good service. The addressee can be presumed to have the notice of the notice sent. The Apex Court held thus:

> " When a notice is return by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in Clause (d) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption. The High Court is, therefore, right in holding the accused is guilty of the offence under Section 138 of the Act."
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> (emphasis supplied)

4. In view of the above settled legal position, it is difficult to reach to the conclusion that petitioners were not served with suit summons. As a matter of fact, with this evidence, the trial Court could not have set aside *ex parte* decree; however, since trial Court has exercised discretion in favour of the respondent and the same is affirmed by the appellate Court and the same being not under challenge, the petitioners should be happy with the order in their favour. No fault can be found with the impugned order. The view taken therein is a reasonable and possible view of the fact that huge amount of recovery is involved.

5. In the result all petitions are dismissed in limine with no order as to costs.

(V.C.DAGA, J.)